



Drafting and Negotiating Commercial Leases

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Drafting and Negotiating Commercial Leases

- Introduction to Drafting Commercial Leases
- Lease Provisions

Introduction to Drafting Commercial Leases

- Types of Leases
- The Drafting Process
- Commercial Lease Checklist

Types of Leases

- Retail
- Office
- Restaurant
- Mixed Use
- Additional Forms and Types



The Drafting Process

- The Letter of Intent (LOI)
- Protecting the Unknown Interests of the Client

Lease Provisions

- 'Basic' Lease Provisions
- Insurance and Casualty
- Subordination
- Construction

‘Basic’ Lease Provisions

- Rate and Description
- Term and Renewals
- CAM Expenses
- Guarantees
- Abatements
- Real Estate Taxes

Commercial Lease Checklist

- Financial Terms
- Terms of the Premises
- Common Areas and Their Expenses/Charges (CAM)
- Assignment and Subletting
- Default
- Repairs and Physical Alterations
- Insurance and Indemnification Provisions
- Subordination and Attornment Provisions
- Casualty, Condemnation and Eminent Domain
- Signage and Parking
- Relocation
- Miscellaneous Provisions



Easements and Other Servitudes in the Commercial Context

Easements and Other Servitudes in the Commercial Context

- Servitudes and Rights Associated With Them
- Terminology: Easement v. Covenant v. License v. Lease
- Creation of Servitudes
- Altering a Servitude
- Abandonment and Extinguishment

Servitudes: Rights and Types

- Easement
- Covenant
- License
- Lease

Easements

- Privilege without profit
- Right to use but NOT right to possess
- Servient v. Dominant
- Express Easement
- Appurtenant v. In Gross

Creation of the Easement

- Express Easement
- Implied Easement
- Easement by Necessity
- Prescriptive Easement
 - Adverse
 - Under Claim of Right
 - Exclusive
 - Continuous
 - Uninterrupted
 - Knowledge & Acquiescence

The Covenant

- Agreement between one or more parties that governs how real property will be utilized
- Right to use but NOT a possessory interest
- Affirmative Obligations
- Negative Covenants

Creation of the Covenant

- Restrictive Covenants
- Running with the Land
- Equitable Easements or Equitable Servitudes
- Enforcement of the Covenant
 - Privity – Horizontal
 - Privity – Vertical
 - Intent
 - Touches and Concerns
 - In Writing

The License

- Right to utilize but NO interest in the real property at all
- Conditional Time and Use
- Creation of the License
 - Express agreement
 - Actions of the owner
- Practical Examples in the Commercial Context

The Lease

- Right to possess AND utilize
- Interest in the real property conditioned upon time and use
- Interest that can be superior to future conveyance or liens
- Back to example of License v. Lease
- Creation of the Lease
 - Oral v. Written

Can a Landowner Alter a Servitude?

- Easements
- Covenants
- Lease
- License

Abandonment and Extinguishment

- Covenants
- Easements
- Licenses
- Leases



Purchase and Sale Agreements

Purchase and Sale Agreements

- Price and Payment Terms
- Representations and Warranties, Conditions and Covenants
- Timing for a Smooth Transition
- Real World Remedies
- Risk of Loss
- Negotiation of Other Provisions
- Sample Purchase/Sale Agreement Review

Spelling out the Price and Payment Terms

- Price
- Deposit
- Payment Terms

Reps and Warranties / Covenants and Conditions

- Representations and Warranties
- Covenants
- Conditions
- Importance of Each
- Examples of Each

Getting Timing Down for a Smooth Transition

- Contingency Periods
- Study Period
- Financing Contingency
- Appraisal Contingency
- Negotiation of Time Periods
- Interests of Each Party

Real World Remedies

- Monetary Damages
- Specific Performance
- Tying up the Deposit
- Negotiating the Default Provisions

Risk of Loss

- Common Law Rule
- Negotiating the Risk
- Assumption of the Risk
- Transfer Date & Time
- Recordation v. Delivery of the Deed

Negotiating Other Provisions

- Title
- Time of the Essence

Sample PSA Review

- Attached Purchase and Sale Agreement
- Discussions with the Client
- Knowing What to Fight / Pick the Battle



Questions

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